

**United States Department of Labor
Employees' Compensation Appeals Board**

L.C., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Danville, IL, Employer**

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**Docket No. 06-1737
Issued: January 25, 2007**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decisions dated December 13, 2005 and June 19, 2006 denying her claim for a back and left leg condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back or left leg condition causally related to factors of her federal employment.

FACTUAL HISTORY

On October 20, 2005 appellant, then a 57-year-old registered nurse, filed a claim for a traumatic injury alleging that on October 13, 2005 she felt pain in her back and down her left leg when a patient pushed and pulled against her as she was assisting in turning him on his side to

facilitate cleaning him.¹ She alleged that she sustained a low back strain and a ruptured or herniated disc.

In an October 20, 2005 report, Dr. Robert K. Hurford, Jr., an attending orthopedic surgeon specializing in the spine, diagnosed spinal stenosis and degenerative lumbar spondylolisthesis. He noted that appellant was seen that day to discuss upcoming surgery to treat her one-year history of left-sided buttocks pain, anterior thigh pain and radicular left leg pain. Dr. Hurford stated that her major problem had been her radicular left leg pain but, on October 13, 2005 she was injured at work and her back pain became acutely worse. In an October 20, 2005 disability certificate, he indicated that appellant could not work beginning October 13, 2005 and that surgery was scheduled for November 11, 2005.

In an October 21, 2005 memorandum, Chris Odle, a supervisor, stated that appellant telephoned on October 19, 2005 to report an injury to her back while turning and changing a resistive patient on the morning of October 13, 2005. Appellant indicated that she felt a pull or “snap” in her back but thought it would resolve. However, when she returned home she could hardly get out of her car.

On October 21, 2005 appellant was given steroid injections for left hip pain. Dr. Steven Schmidt, a surgeon, stated that her back was doing fine following three lumbar epidural steroid injections during the summer. However, appellant “described an incident where it sounded like she reinjured her back at work.”

On November 8, 2005 the Office advised appellant that the evidence was insufficient to establish that she sustained a medical condition on October 13, 2005 at work. It asked her to provide additional information, including a medical report with a firm diagnosis, history of any previous injuries to similar parts of the body and a rationalized explanation as to how the October 13, 2005 incident caused or aggravated the diagnosed condition.

By decision dated December 13, 2005, the Office denied appellant’s claim on the grounds that the medical evidence did not establish that the incident on October 13, 2005 caused a medical condition.

Appellant requested an oral hearing that was held on April 20, 2006.

Appellant submitted additional evidence. An operative report dated November 11, 2005 indicated that appellant underwent back surgery, performed by Dr. Hurford, for treatment of spinal stenosis at L2-3, L3-4 and L4-5,² a herniated disc at L5-S1 with left radiculopathy and degenerative spondylolisthesis at L4-5. A November 16, 2005 hospital discharge summary indicated that she had a multiyear history of progressive leg and back pain that failed conservative treatment, necessitating the surgery.

¹ In a May 2, 2006 statement, Sheri Marx, a licensed practical nurse, stated that on October 13, 2005 she and appellant were attempting to turn a resistive patient in order to clean him. He pushed against her and appellant. Appellant made no comments during the cleaning but later said she was sore and Ms. Marx found another person to assist her with other tasks.

² Dr. Hurford indicated that appellant had at least a six-month history of symptomatic spinal stenosis.

In a December 28, 2005 report, Dr. Hurford stated that he treated appellant in August 2005 for spinal stenosis and lumbar listhesis. In October 2005, appellant reported that she was injured at work on October 13, 2005 and her back and leg pain worsened. She decided to proceed with surgery. Dr. Huford stated:

“From [appellant’s] self[-]reported history as well as our office visit and the nature of her symptoms it is certainly reasonable to conclude that her injury at [work] on October 13, 2005 made her back and leg pain symptoms from her spinal stenosis and spondylolisthesis worse and pushing to the point where she decided she wanted to proceed with surgical treatment. I do not have any specific information related to the initial cause of the onset of her symptoms eight months prior to seeing me.”

In an April 4, 2006 report, Dr. Hurford stated, “I think that the injury that [appellant] had at work on October 13, 2005 was a new lumbar disc herniation on top of her previous stenosis, which made her leg symptoms worse before her surgery.”

In an April 5, 2006 report, Dr. Thomas J. Halloran, an attending Board-certified internist, stated that appellant had a long history of spinal stenosis and low back discomfort. On October 13, 2005 appellant was working with a heavy patient who was resisting efforts to be cleaned up. During that task she felt the abrupt onset of severe left low back pain with discomfort radiating into her leg and foot. Dr. Halloran indicated that “this was a distinct incident and profound exacerbation of her discomfort.” He stated:

“My opinion is that [appellant] had underlying spinal stenosis and pain related to that which was greatly exacerbated by the work[-]related incident of October 13, 2005, in all likelihood causing her ruptured disc and the exacerbation of her pain. The mechanism of injury, working with patient resisting movement with a position which was awkward for [appellant’s] back mechanics, could have certainly caused the acute rupture and exacerbation of her pain.”

By decision dated June 19, 2006, an Office hearing representative affirmed the December 13, 2005 decision.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁴ An

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS

Appellant alleged that on October 13, 2005 she sustained a back and left leg injury when a heavy patient pushed and pulled against her as she was assisting in turning him on his side to facilitate cleaning him. The Office accepted that the incident occurred as alleged, but denied the claim on the grounds that she had not established an injury as a result of the incident. The Board finds that the case is not in posture for decision.

On October 20, 2005 Dr. Hurford diagnosed spinal stenosis⁶ and degenerative lumbar spondylolisthesis.⁷ He noted that appellant had upcoming surgery to treat her one-year history of left-sided buttocks pain, anterior thigh pain and radicular left leg pain. Appellant's major problem had been her radicular left leg pain but on October 13, 2005 appellant was injured at work and experienced acute back pain. Dr. Hurford indicated that she was totally disabled beginning October 13, 2005. A November 11, 2005 operative report indicated surgery for

⁵ Gary J. Watling, 52 ECAB 278 (2001); Shirley A. Temple, *supra* note 4.

⁶ Spinal stenosis is a form of sciatica (pain radiating down one or both buttocks and/or the legs in the distribution of the sciatic nerve) resulting from lumbar spinal canal narrowing, causing pressure on the nerve roots. *The Merck Manual of Diagnosis and Therapy* (16th ed. 1992) 1363.

⁷ Spondylolisthesis is the forward displacement of one vertebra over another, usually of the fifth lumbar vertebra over the body of the sacrum or of the fourth lumbar vertebra over the fifth. *DORLAND'S Illustrated Medical Dictionary* (27th ed. 1988) 1567.

treatment of spinal stenosis at L2-3, L3-4 and L4-5, a herniated disc⁸ at L5-S1 with left radiculopathy and degenerative spondylolisthesis at L4-5. On December 28, 2005 Dr. Hurford stated:

“From [appellant’s] self[-]reported history as well as our office visit and the nature of her symptoms it is certainly reasonable to conclude that her injury at [work] on October 13, 2005 made her back and leg pain symptoms from her spinal stenosis and spondylolisthesis worse and pushing to the point where [appellant] decided she wanted to proceed with surgical treatment.”

On April 4, 2006 Dr. Hurford stated that the injury that appellant had at work on October 13, 2005 was a new lumbar disc herniation on top of her previous stenosis.

In an April 5, 2006 report, Dr. Halloran stated that appellant had a history of spinal stenosis and low back discomfort but the October 13, 2005 incident was a distinct incident that profoundly exacerbated her back condition and, “in all likelihood, causing her ruptured disc and the exacerbation of her pain.” He noted that appellant was working with a heavy patient who was resisting efforts to be cleaned up and she experienced an abrupt onset of severe low back pain with discomfort radiating into her leg and foot. Dr. Halloran indicated that the mechanism of injury, working with an uncooperative patient in a position that was awkward for her back mechanics, could have caused the acute disc rupture.

The Board finds that the case is not in posture for decision as to whether appellant sustained an aggravation of her underlying spinal stenosis and spondylolisthesis as a result of the October 13, 2005 work incident, as well as a new condition, a herniated disc, necessitating surgery. Dr. Halloran described the mechanism of injury on October 13, 2005 when appellant was attempting to turn a heavy patient onto his side. He indicated that the awkward position and body mechanics required to perform this maneuver caused severe low back pain which radiated into appellant’s left leg. Dr. Halloran opined that the October 13, 2005 incident caused appellant’s ruptured disc and aggravated her underlying spinal stenosis. Dr. Hurford’s reports, although lacking in medical rationale, were in agreement with Dr. Halloran that the October 13, 2005 incident caused an aggravation of appellant’s underlying stenosis and spondylolisthesis and a new herniated disc on top of the stenosis which increased her left leg symptoms.

Proceedings under the Federal Employees’ Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁹

⁸ A herniated disc is a protrusion (rupture) of the nucleus pulposus (central portion of a disc) or annulus fibrosus (the fibrous ring around the nucleus pulposus) into the spinal canal which may impinge on nerve roots. See DORLAND’S *Illustrated Medical Dictionary* (27th ed. 1988) 758, 1158, 91. See also *The Merck Manual of Diagnosis and Therapy* (16th ed. 1992) 1362, 1515.

⁹ *Leon Thomas*, 52 ECAB 202 (2001).

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant sustained an aggravation of her underlying spinal stenosis and spondylolisthesis and or disc herniation causally related to the accepted employment incident. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant sustained a temporary or permanent aggravation of her spinal stenosis and spondylolisthesis or a new condition of a herniated disc causally related to the October 13, 2005 employment incident. After such further development as the Office deems necessary, it should determine appellant's entitlement to compensation benefits for lost wages and medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 19, 2006 and December 13, 2005 are set aside and the case is remanded for further action consistent with this decision.

Issued: January 25, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board